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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RONALD M. YONEMOTO,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,

Defendant.

) CIVIL NO. CV 06 00378 **JMS BMK**

)

) COMPLAINT FOR DECLARATORY AND

) INJUNCTIVE RELIEF; EXHIBITS

) "A"- "W"; SUMMONS

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I.

INTRODUCTION

1. This action seeks declaratory and injunctive relief against the named Defendant for the unlawful withholding of records concerning Plaintiff that are within its possession in violation of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq. and/or the Privacy Act of 1974 ("PA"), as amended, 5 U.S.C. § 552a, et seq.

II.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and personal jurisdiction in this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5), and 28 U.S.C. § 1331.

3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5) and 28 U.S.C. § 1391(b)(e) in that the actions complained of herein took place in the State of Hawaii.

III.

PARTIES

4. Plaintiff is an employee of the Department of Veterans Affairs as the Special Assistant, GS-13, to the Director of the Veterans Affairs Medical and Regional Office Center, now known as the Veterans Affairs Pacific Islands Health Care System (hereinafter "Agency"), located in Honolulu, Hawaii.

5. Defendant Department of Veterans' Affairs ("VA") is an agency of the United States, and has possession of and control over the records that Plaintiff seeks.

IV.

FACTUAL ALLEGATIONS:

6. Plaintiff made the following requests to the VA for copies of electronic mail ("e-mail") sent and/or received by certain employees of the VA.

7. By letter dated May 23, 2005, with amendments dated May 26 and 31, 2005, Plaintiff made a request to JoAnn Connolly ("Connolly") and to the FOIA/PA Officer, for copies of all e-mails transmitted in the VA's e-mail database transmitted and/or received by Mary Cronin during the period of May 1, 2003, to June 1, 2005.

8. Exhibits "A" to "C" are true and correct copies of Plaintiff's May 23, 26 and 31, 2005 letters (collectively "May, 2005 Request").

9. By letter dated July 11, 2005 (July 11, 2005 Request) Plaintiff made a request to the FOIA/PA Officer for copies of all Microsoft Outlook e-mails sent and/or received by Mary Cronin ("Cronin") from H. David Burge ("Burge"), Steven MacBride ("MacBride"), Ronald Savoy ("Savoy"), Anita Coit ("Coit"), Dewey Brown ("Brown"), Cecil-Ann Sayles ("Sayles"), Anthony Wallace ("Wallace"), Gary VanBrocklyn (VanBrocklyn"), Patricia Wieland ("Wieland"), Linda Beauregard-Axelson ("Beauregard-Axelson"), James Carilli ("Carilli") and/or Brian O'Neill ("O'Neill") that referred to Plaintiff in the body of the message during the period of May 1, 2003 to July 11, 2005.

10. The July 11, 2005 Request also sought copies of all e-mails transmitted and/or sent by Cronin to Burge, MacBride, Savoy, Coit, Brown, Sayles, Wallace, VanBrocklyn, Wieland, Beauregard-Axelson, Carilli and/or O'Neill that referred to

Plaintiff by name, acronym or initials in the body of the message during the period of May 1, 2003 to July 11, 2005.

11. The July 11, 2005 Request also sought e-mails sent to Burge by Cronin and/or received by Cronin from Burge during the period of May 1, 2003 to September 1, 2004. The requested e-mails should show Cronin as Acting Associate Director, Acting Director or Associate Director.

12. The July 11, 2005 Request also sought all e-mails containing the Emergency Cascade list during the period of May 1, 2003 to September 1, 2004.

13. The July 11, 2005 Request also sought copies of Travel Authorizations sheets for the period of May 1, 2003 to August 30, 2004 that showed H. David Burge, then Director of the Agency, as the traveler with Mary Cronin as the "Acting Associate Director" authorizing his travel.

14. The July 11, 2005 Request also sought copies of SF-52 detailing Mary Cronin as Acting Associate Director, and documents, letters and e-mails showing the nomination of Mary Cronin to GS-14 by Burge.

15. Exhibit "D" attached herein is a true and correct copy of Plaintiff's July 11, 2005 Request.

16. By letter dated November 15, 2005 ("November 15, 2005 Request"), Plaintiff made a request to the FOIA/PA Officer for copies of all Microsoft Outlook e-mails transmitted during the

period of September 20, 2004 to November 12, 2005, pertaining to all e-mails transmitted or sent to Cronin by O'Neill, without any "cc" to anyone. Additionally, Plaintiff requested copies of all e-mails transmitted or sent to O'Neill by Cronin, without any "cc" to anyone.

17. The November 15, 2005 Request further requested searches and copies of e-mails received by Cronin from O'Neill, MacBride, Savoy, Catherine Katayama ("Katayama"), Coit, Brown, Sayles, VanBrocklyn, Wieland, Beauregard-Axelson, Craig Oswald ("Oswald") and/or Carilli that referred to Plaintiff or any word, name, symbol, acronym, or letter(s) which could be construed to refer to him in the content of the messages during the period of April 1, 2004 to November 12, 2005, subject to specified limitations.

18. The November 15, 2005 Request further requested copies of all e-mails sent by Cronin to O'Neill, MacBride, Oswald, Savoy, Katayama, Coit, Brown, Sayles, VanBrocklyn, Wieland, Beauregard-Axelson and/or Carilli that referred to Plaintiff, or to any word, name, symbol, acronym, or letter(s) which could be construed to refer to Plaintiff in the content of the message during the period of April 1, 2004 to November 12, 2005, subject to specified limitations.

19. The November 15, 2005 Request further requested copies of all e-mails sent to Cronin and O'Neill, individually and

collectively, as well as all e-mails received by Cronin and Dr. O'Neill, individually and collectively, that contained certain word(s), as well as any derogatory, defaming, unflattering or negative remarks, references, comments or statements, in the content of the message, subject to specified limitations.

20. Exhibit "E" attached herein is a true and correct copy of Plaintiff's November 15, 2005 Request.

21. By letter dated November 22, 2005 ("November 22, 2005 Request"), Plaintiff made a request to the FOIA/PA Officer for copies of all Microsoft Outlook e-mails which Miles Miyamoto, Esq. ("Miyamoto"), Agency's Assistant Regional Counsel, reviewed as indicated in his FOIA Response Cost Sheet given to Plaintiff on November 22, 2005.

22. Attached herein as Exhibit "F" is a true and correct copy of Plaintiff's November 22, 2005 Request.

23. On November 25, 2005, the Agency wrote a letter in response to Plaintiff's November 22, 2005 Request by attaching 21 pages, including redactions on four pages.

24. On November 26, 2005, Plaintiff submitted to the VA General Counsel his appeal of the Agency's decision to this November 22, 2005 Request. The VA General Counsel received Plaintiff's appeal on December 2, 2005, and considered it a FOIA appeal.

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25. Exhibit "G" attached herein is a true and correct copy of Plaintiff's November 26, 2005 appeal letter, without attachments.

26. By letter dated December 4, 2005 ("December 4, 2005 Request"), Plaintiff made a request to the FOIA/PA Officer for copies of all Microsoft Outlook e-mails during the period of January 1, 2004 to November 25, 2005 that were sent and/or received by MacBride and Cronin that referred to Plaintiff, or any word, name, symbol, acronym, or letter(s) which could be construed to refer to him in the content of the message, subject to specified limitations.

27. The December 4, 2005 Request further requested copies of all Microsoft Outlook e-mails during the period of January 1, 2004 to November 25, 2005 that were sent and/or received by MacBride and Cronin that contained certain words, as well as any derogatory, defamatory, unflattering, insulting, disparaging or negative remarks, references, comments, or statements in the content of the message, subject to specified limitations.

28. Exhibit "H" attached herein, is a true and correct copy of Plaintiff's December 4, 2005 Request.

29. By letter dated December 8, 2005, the Agency responded to Plaintiff's July 11, 2005 Request by enclosing a total of 41 pages, some redacted, of responsive documents. By letter of December 9, 2005, Plaintiff also requested 19 e-mail pages. By

letter of December 19, 2005, Plaintiff made a request to the Agency for the full disclosures of two pages that contained redactions. As Plaintiff received no response to this request from the Agency, Plaintiff submitted his appeal to the VA General Counsel on March 4, 2006.

30. Exhibit "I" attached herein is a true and correct copy of Plaintiff's March 4, 2006 appeal letter, without attachments.

31. By letter dated December 17, 2006, Plaintiff submitted his FOIA appeal to the VA General Counsel as to the Agency's delay in responding fully to Plaintiff's July 11, 2005 request. This letter also noted that William Liston ("Liston"), Facility Manager for the Agency's e-mail system, was not assigned to the July 11, 2005 request until August 19, 2005.

32. Additionally, Plaintiff's December 17, 2005 letter stated that in November 2005, Mary Cronin ("Cronin"), Chief of Information Resource Management Service ("IRMS"), and Gary Benson, IRMS staff member, placed passwords on the e-mail file to prevent Liston to complete the processing of Plaintiff's FOIA/PA requests. As Cronin had interest in the withholding of the e-mails Plaintiff requested under the FOIA/PA, Plaintiff requested the General Counsel to relieve Cronin of any involvement with the processing of his FOIA/PA requests.

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33. Exhibit "J" attached herein is a true and correct copy of December 17, 2005 appeal letter, without attachments.

34. On December 24, 2005, Plaintiff wrote a letter to the VA General Counsel containing additional information that Cronin was delaying the process of his FOIA/PA requests, as stated in his FOIA appeal dated December 17, 2005. This included Cronin relieving William Liston and Gary Benson of their FOIA/PA duties on December 14, 2005, and assigning Christopher Grant, a programmer with no apparent expertise or experience to conduct e-mail searches, to process Plaintiff's November 15, 2005 Request.

35. By letter dated January 9, 2006, the Agency responded to Plaintiff's December 19, 2005 Request. The response attached 46 pages, with redactions on certain pages.

36. By letter dated January 14, 2006, Plaintiff submitted his appeal to the VA General Counsel the Agency's January 9, 2006 response to Plaintiff's December 19, 2005 Request. Plaintiff sought full disclosure of the redacted documents. The VA General Counsel received Plaintiff's January 14, 2006 appeal letter on January 25, 2006, and considered it a FOIA appeal.

37. Exhibit "K" attached herein is a true and correct copy of Plaintiff's January 14, 2006 appeal letter, without attachments.

38. By letter dated January 23, 2006, the Agency responded to Plaintiff's July 11, 2005 Request. The response attached 8

pages, with redactions.

39. By letter dated January 28, 2006, Plaintiff submitted his appeal to the VA General Counsel regarding Miyamoto's January 23, 2006 response. Plaintiff sought to have full disclosures of the redacted documents.

40. Exhibit "L" attached herein is a true and correct copy of Plaintiff's January 28, 2006 appeal letter, without attachments.

41. By letter dated February 2, 2006, the Agency made a partial response to Plaintiff's November 15, 2005 Request. The response attached 114 pages, including redactions on certain pages.

42. By letter dated February 3, 2006, Plaintiff submitted his appeal to the VA General Counsel regarding the Agency's continued delay in responding to his December 4, 2005 Request.

43. Exhibit "M" attached herein is a true and correct copy of Plaintiff's February 3, 2006 appeal letter, without attachments.

44. By letter dated February 4, 2006 ("February 4, 2006 Request"), Plaintiff made a request to the FOIA/PA Officer for copies of all remaining e-mails that were responsive to his July 11, 2005 Request not yet produced.

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45. Exhibit "N" attached herein is a true and correct copy of Plaintiff's February 4, 2006 letter.

46. On February 2, 2006, the Agency provided 114 pages of e-mails as a result of Plaintiff's November 15, 2005 Request. By letter dated February 6, 2006, Plaintiff made a request to the FOIA/PA Officer for copies of all remaining e-mails which had been received by Miyamoto but were not provided on February 2, 2006. On February 4, 2006, Plaintiff requested copies of all remaining e-mails which were received by Miyamoto on January 20, 2006 from Liston, but were not provided.

47. Exhibit "O" attached herein is a true and correct copy of Plaintiff's February 6, 2006 letter.

48. By letter dated February 19, 2006, Plaintiff submitted his appeal to the VA General Counsel regarding the Agency's February 2, 2006 response to Plaintiff's November 15, 2005 Request. Plaintiff sought full disclosure of the redacted documents.

49. Exhibit "P" attached herein is a true and correct copy of Plaintiff's February 19, 2006 appeal letter, without attachments.

50. By letter dated February 23, 2006, the Agency responded to Plaintiff's February 4, 2006 Request. Attached to this response was 64 pages, with redactions on some pages.

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51. By letter dated March 4, 2006, Plaintiff submitted his appeal to the VA General Counsel regarding the Agency's response letters of December 6, 2005 and February 23, 2006 toward Plaintiff's December 19, 2005 Request. Plaintiff sought full disclosure of the redacted documents attached to these response letters. The VA General Counsel acknowledged receipt of Plaintiff's March 4, 2006 appeal letter on March 21, 2006, and considered it a FOIA appeal.

52. Exhibit "I," supra., attached herein is a true and correct copy of Plaintiff's March 4, 2006 appeal letter, without attachments.

53. By letter dated March 17, 2006, the Agency provided a partial response to Plaintiff's November 15, 2005 Request. Attached to the response was 69 pages, including redactions on certain pages.

54. By letter dated March 17, 2006, the Agency provided a response to Plaintiff's July 11, 2005 Request. The response attached 5 pages of documents.

55. By letter dated March 22, 2006 ("March 22, 2006 Request"), Plaintiff submitted a request to Adam Chin, the current FOIA/PA Officer, for the period from January 1, 2004 to November 25, 2005, copies of all Microsoft Outlook e-mails sent and/or received by Connolly that referred to Plaintiff or any word, name, symbol, acronym or letter(s) that can be construed to

refer to Plaintiff in the body of the message.

56. The March 22, 2006 Request also requested all of Connolly's e-mails that were sent and/or received from Steven MacBride, Mary Cronin, Gary VanBrocklyn, Catherine Katayama, William Liston, Christopher Grant, Gene Chow, and Gary Benson that referred to Plaintiff or any word, name, symbol, acronym or letter(s) that can be construed to refer to Plaintiff in the body of the message.

57. The March 22, 2006 Request also requested all e-mails sent and/or received by Connolly that contained specific words and any derogatory, defamatory, unflattering and/or negative remarks, references, comments or statements in the body of the message.

58. Exhibit "Q" attached herein is a true and correct copy of the March 22, 2006 Request.

59. By letter dated March 26, 2006, Plaintiff submitted a request to the current FOIA/PA Officer for production of outstanding documents responsive to his November 22, 2005 Request.

60. Exhibit "R" attached herein is a true and correct copy of Plaintiff's March 26, 2006 letter.

61. By letter dated April 1, 2006, Plaintiff submitted his FOIA/PA appeal to the VA General Counsel as to the Agency's March 17, 2006 response to Plaintiff's November 15, 2005 Request.

Plaintiff sought full disclosure of the redacted documents.

62. Exhibit "S" attached herein is a true and correct copy of Plaintiff's April 1, 2006 appeal letter, without attachments.

63. By letter dated April 2, 2006 ("April 2, 2006 Request"), Plaintiff submitted a request to the FOIA/PA Officer for copies of all Microsoft Outlook e-mails for the period from January 1, 2003 to April 2, 2006 that were sent and/or received by Gary VanBrocklyn that referred to Plaintiff or any word, name, symbol, acronyms, or letter(s) which can be construed to refer to him in the body of the message.

64. The April 2, 2006 Request also pertained to all of Gary VonBrocklyn's e-mails sent and/or received from any individuals, particularly Steven MacBride, Mary Cronin, Catherine Katayama, JoAnn Connolly and Gene Chow, that contained specific word(s) in the body of the message.

65. Exhibit "T" is a true and correct copy of Plaintiff's April 2, 2006 Request.

66. By letter dated April 4, 2005, the Agency submitted a partial response to Plaintiff regarding his November 15, 2005 Request. This response attached 217 pages, including redactions to certain pages.

67. By letter dated April 6, 2006, the VA General Counsel issued its final administrative decision affirming the Regional Counsel's decision to withhold certain documents responsive to

Plaintiff's November 22, 2005 Request. The VA General Counsel advised Plaintiff that he may file a complaint in the appropriate United States District Court.

68. By letter dated April 9, 2006, Plaintiff submitted his FOIA/PA appeal to the VA General Counsel regarding the Agency's April 4, 2006 response to Plaintiff's November 15, 2005 Request. Plaintiff sought full disclosure of the redacted documents.

69. Exhibit "U" attached herein is a true and correct copy of Plaintiff's April 9, 2006 appeal letter, without attachments.

70. By letter dated May 22, 2006, the Agency submitted to Plaintiff a partial response to Plaintiff's November 15, 2005 Request. The response attached 89 pages, including redactions to certain pages.

71. By letter dated May 23, 2006, the Agency submitted to Plaintiff a partial response to Plaintiff's November 15, 2005 request. After reviewing 526 pages, the response attached 8 pages, including redactions to certain pages.

72. By letter dated May 27, 2006, Plaintiff submitted his FOIA/PA appeal to the VA General Counsel regarding the Agency's May 22, 2006 response to Plaintiff's November 15, 2005 Request.

73. Exhibit "V" attached herein is a true and correct copy of Plaintiff's May 27, 2006 appeal letter, without attachments.

74. By letter dated May 27, 2006, Plaintiff submitted his FOIA/PA appeal to the VA General Counsel regarding Miyamoto's May

23, 2006 response to Plaintiff's November 15, 2005 Request.

75. Exhibit "W" attached herein is a true and correct copy of Plaintiff's May 27, 2006 appeal letter, without attachments.

VI.

PROCEDURAL HISTORY

76. As noted above, Plaintiff submitted his written appeals to Defendant in accordance with the FOIA:

- a. November 26, 2005 from the Agency's November 25, 2005 decision;
- b. January 14, 2006 from the Agency's January 9, 2006 decision;
- c. January 28, 2006 from the Agency's January 23, 2006 decision;
- d. February 19, 2006 from the Agency's February 2, 2006 decision;
- e. March 4, 2006 from the Agency's December 8 and 19, 2005, and February 23, 2006 decisions;
- f. April 1, 2006 from the Agency's March 17, 2006 decision;
- g. April 9, 2006 from the Agency's April 4, 2006 decision;
- h. May 27, 2006 from the Agency's May 22, 2006 decision;
- i. May 27, 2006 from the Agency's May 23, 2006,

decision.

77. In accordance with the FOIA, Defendant was to respond to Plaintiff's appeals within twenty working days. As the Defendant has not responded to Plaintiff's appeals identified in paragraph 76, Plaintiff is authorized under the FOIA/PA to file this action with this Court.

78. As noted in paragraph 67, the VA General Counsel issued his final administrative decision as to Plaintiff's November 22, 2005 Request on April 6, 2006. Under the FOIA, Plaintiff is entitled to file a complaint with this Court regarding the final administrative decision.

VII.

FIRST CLAIM FOR RELIEF

79. The actions of the Defendant as complained violate 5 U.S.C. § 552, et seq.

VIII.

SECOND CLAIM FOR RELIEF

80. The actions of the Defendant as complained violate 5 U.S.C. § 552a, et seq.

WHEREFORE, the Plaintiff prays that this Honorable Court grant him the following relief:

1. Declare and adjudge that the Defendant's actions of withholding the requested documents violate the FOIA 5 U.S.C. § 552, et seq.:

2. Declare and adjudge that Defendant's actions of withholding the requested documents violates the Privacy Act, 5 U.S.C. § 552a, et seq.:

3. Direct that the Defendant immediately complies with Plaintiff's records request;

4. Retain jurisdiction of the Plaintiff's Freedom of Information and Privacy Act claims until the Defendant has complied in full;

5. Order that the Defendant pay the Plaintiff's attorney's fees and costs incurred in this matter;

6. Order that no fees be charged for any search or review of the record under the Privacy Act. In the alternative, an order that all fees be waived for any search or review of the record under the Privacy Act.

7. Order that fees for records and services the Agency provided in response to Plaintiff's FOIA requests be waived in the public interest. Alternatively, in the event fees are charged, order the Defendant to produce a statement of accounting for, or an itemization of the Agency's charges in processing Plaintiff's FOIA/PA requests.

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8. Grant the Plaintiff such other and further relief as this Court deems just and appropriate.

DATED: Honolulu, Hawaii, July 11, 2006.



CLAYTON C. IKEI
JERRY P.S. CHANG

Attorneys for Plaintiff,
RONALD M. YONEMOTO